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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2013-107

11 **KIMBERLY ROSE MCCALLION**

OAH No. 2012090902

12 228 E. Elfin Green
13 Port Hueneme, CA 93041

FIRST AMENDED ACCUSATION

14 Registered Nurse License No. 743464

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about January 29, 2009, the Board of Registered Nursing issued Registered
23 Nurse License Number 743464 to Kimberly Rose McCallion ("Respondent"). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 expired on December 31, 2012, and has not been renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
3 any licensee, including a licensee holding a temporary or an inactive license, for any reason
4 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code
8 provides, in pertinent part, that the Board may renew an expired license at any time within eight
9 years after the expiration.

10 6. Section 2761 of the Code states in pertinent part:

11 "The board may take disciplinary action against a certified or licensed
12 nurse or deny an application for a certificate or license for any of the following:

13 (a) Unprofessional conduct, which includes, but is not limited to, the
14 following:

15 ...

16 (d) Violating or attempting to violate, directly or indirectly, or assisting
17 in or abetting the violating of, or conspiring to violate any provision or term of this
18 chapter [the Nursing Practice Act] or regulations adopted pursuant to it."

19 7. Section 2762 of the Code states in pertinent part:

20 "In addition to other acts constituting unprofessional conduct within the
21 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
22 person licensed under this chapter to do any of the following:

23 (a) Obtain or possess in violation of law, or prescribe, or except as
24 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
25 himself or herself, or furnish or administer to another, any controlled substance as
26 defined in Division 10 (commencing with Section 11000) of the Health and Safety
27 Code or any dangerous drug or dangerous device as defined in Section 4022.

28 (b) Use any controlled substance as defined in Division 10 (commencing
with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety to
the public the practice authorized by his or her license.

...

(e) Falsify, or make grossly incorrect, grossly inconsistent, or
unintelligible entries in any hospital, patient, or other record pertaining to the

substances described in subdivision (a) of this section.”

DRUG DEFINITIONS

8. **Morphine Sulphate (Morphine)** – a Schedule II controlled substance pursuant to Health and Safety Code section 11055, and a dangerous drug pursuant to Business and Professions Code section 4022. It is a narcotic analgesic used for the relief of severe pain.

9. **Hydrocodone/Acetaminophen (Norco/Vicodin)** – a Schedule II controlled substance pursuant to Health and Safety Code section 11055, and a dangerous drug pursuant to Business and Professions Code section 4022. It is a narcotic indicated for the relief of moderate to moderately severe pain.

10. **Hydromorphone (Dilaudid)** – a Schedule II controlled substance pursuant to Health and Safety Code section 11055, and a dangerous drug pursuant to Business and Professions Code section 4022. It is a narcotic analgesic used for the relief of severe pain.

11. **Lorazepam (Ativan)** - a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and a dangerous drug pursuant to Business and Professions Code section 4022. It is a Benzodiazepine used for the relief of anxiety, panic attacks, and chronic sleeplessness.

12. **Percocet**, a trade name for a combination of oxycodone hydrochloride and acetaminophen, is a semi synthetic narcotic analgesic. It is classified as a dangerous drug under section 4022 of the Code and as a schedule II controlled substance under Health and Safety Code section 11055.

13. **Oxycontin** is a brand name for Oxycodone. It is a narcotic indicated for the relief of moderate to severe pain. Oxycontin is classified as a dangerous drug under section 4022 of the Code and as a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

COMMUNITY MEMORIAL HEALTH CARE SYSTEM

15. Respondent was employed at Community Memorial Health Care System ("CMHCS") as a Nurse Assistant beginning in 2001. She was later promoted to an Interim Permittee Nurse. In January of 2009, after she received her license to be a Registered Nurse, she was promoted to a Registered Nurse.

16. At all times relevant to the charges herein, CMHCS used a drug dispensing system called the "Pyxis System." The Pyxis is a computerized automated medication dispensing machine. The user enters a password to gain access and dispense medication from the machine. The machine records the user name, patient name, medication, dose, date and time of the withdrawal. The Pyxis is integrated with hospital pharmacy inventory management systems.

17. On or about December 22, 2009, the Board received a Complaint from Director alleging that Respondent admitted to diverting narcotics for personal use and would enter a diversion program. An investigation was opened and interviews as well as a review of relevant documents revealed the following discrepancies:

PATIENT 1¹

Date & Time	Pyxis (Withdrawal)	Medication Administration Record (Charting)
12/4/09 at 05:24	Hydromorphone 2mg injection	No documentation regarding wastage, 0.5mg charted on MAR at 05:00
SUMMARY: Respondent obtained 2mg Hydromorphone injection from the Pyxis. 0.5mg Hydromorphone was administered to the patient. There is no documentation regarding wastage. 1.5mg Hydromorphone is unaccounted for.		

PATIENT 2²

Date & Time	Pyxis (Withdrawal)	Medication Administration Record (Charting)
12/4/09 at 03:22	2 Lorazepam tablet 0.5 mg	1mg charted on MAR at 22:45 on 12/3/09
No withdrawal	No withdrawal	1mg charted on MAR at 23:00 on 12/3/09
12/4/09 at 05:19	1 Lorazepam tablet 1 mg	1mg charted on MAR at 04:45 on 12/4/09
SUMMARY: Respondent indicated on the MAR that she administered Lorazepam three times from 12/3/09 to 12/4/09 but there are not three corresponding withdrawals on the Pyxis report.		

¹ Patient 1 (Account No. H002123321; Medical Record Number M00290757).

² Patient 2 (Account No. H002123675; Medical Record Number M00329730).

PATIENT 3³

Date & Time	Pyxis (Withdrawal)	Medication Administration Record (Charting)
11/3/09 at 20:26	1 tablet Hydrocodone 5mg/325mg	No documentation regarding wastage; no charting on MAR
SUMMARY: The physician's order called for 1tab Hydrocodone 10mg/325mg every 4 hours as needed for pain. Respondent obtained 1 tab Hydrocodone 5mg/325mg on 11/3/09 at 2026. There is no documentation regarding administration or wastage. 1 tab Hydrocodone 5mg/325mg is unaccounted for.		

PATIENT 4⁴

Date & Time	Pyxis (Withdrawal)	Medication Administration Record (Charting)
12/8/09 at 22:55	1 Hydromorphone 2mg injection	0.5mg charted on MAR at 22:30; 1mg wasted at 0248.
12/9/09 at 02:11	1 Hydromorphone 2mg injection	0.5mg charted on MAR at 02:45; 1mg wasted at 0248.
12/9/09 at 05:23	1 Hydromorphone 2mg injection	0.5mg charted on MAR at 06:30; 1mg wasted at 0524.
SUMMARY: Physician's order called for 0.5 mg Hydromorphone every 4 hours as needed for pain scale 6-10. Respondent obtained 6mg Hydromorphone injection. 1.5 mg Hydromorphone was administered to the patient. 3mg Hydromorphone was wasted. 1.5 mg Hydromorphone is unaccounted for.		

PATIENT 5⁵

Date & Time	Pyxis (Withdrawal)	Medication Administration Record (Charting)
11/4/09 at 06:28	1 Morphine 2mg injection	No wastage documented; 1mg charted on MAR at 06:30.
SUMMARY: Respondent obtained 2mg Morphine injection. 1mg Morphine was administered to the patient per MAR. There is no documentation regarding wastage. 1mg Morphine is unaccounted for.		

18. On or about December 5, 2011, an Investigator with the Board interviewed Respondent. During the interview, Respondent admitted that as a young adult she became addicted to methamphetamine. Respondent told the Investigator that she became sober. Respondent admitted that, after becoming a Registered Nurse, she started diverting narcotics from CMHCS. She diverted narcotics for several months. She admitted to diverting Vicodin, Norco, Oxycontin and Percocet for her own use. She admitted to diverting 5-10 narcotic pills a shift.

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³ Patient 3 (Account No. H002105398; Medical Record Number M00263729).

⁴ Patient 4 (Account No. H002124680; Medical Record Number M00329774).

⁵ Patient 5 (Account No. H002105820; Medical Record Number M00073511).

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 19. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
4 Code on the grounds of unprofessional conduct in that, while employed as a nurse at CMHCS
5 Respondent diverted Vicodin, Norco, Oxycontin and Percocet for her own use and that
6 Respondent obtained Morphine. The conduct is more particularly described in paragraphs 15
7 through 18 above, inclusive and herein incorporated by reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct: Illegally Obtained or Possessed Controlled Substances)**

10 20. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
11 Code as defined in section 2762, subdivision (a) of the Code in that Respondent obtained or
12 possessed Morphine, Hydromorphone and Hydrocodone all controlled substances and dangerous
13 drugs, in violation of law. Additionally, Respondent admitted to diverting Vicodin, Norco,
14 Oxycontin and Percocet for her own use. The conduct is more particularly described in
15 paragraphs 15 through 18 above, inclusive and herein incorporated by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct: Dangerous Use of Drugs)**

18 21. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
19 Code as defined in section 2762, subdivision (b) of the Code in that Respondent used controlled
20 substances and dangerous drugs to an extent and in a manner dangerous or injurious to herself,
21 others or the public. Specifically, Respondent admitted to diverting Vicodin, Norco, Oxycontin
22 and Percocet for her own use. The conduct is more particularly described in paragraphs 15
23 through 18 above, inclusive and herein incorporated by reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct: Falsify, Make Grossly Incorrect, or Inconsistent Entries)**

26 22. Respondent is subject to disciplinary action under section 2761 as defined in section
27 2762, subdivision (e) of the Code on the grounds of unprofessional conduct in that Respondent
28 falsified, made grossly incorrect and inconsistent entries in hospital and patient records pertaining

1 to controlled substances and dangerous drugs. The conduct is more particularly described in
2 paragraphs 15 through 18 above, inclusive and herein incorporated by reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Nursing Practice Act)**

5 23. Respondent is subject to disciplinary action under section 2761, subdivision (d) of the
6 Code in that Respondent violated provisions of the Nursing Practice Act when she obtained
7 controlled substances and dangerous drugs for her own use and failed to accurately maintain
8 hospital and patient records. The violations are more particularly described in paragraphs 15
9 through 18, above, inclusive and herein incorporated by reference.

10 **DISCIPLINARY CONSIDERATIONS**

11 24. To determine the degree of discipline, Complainant alleges that on or about
12 September 9, 2008, Respondent submitted her Application for Licensure by Examination to the
13 Board. On her application, Respondent admitted to several misdemeanor convictions, as follows:

14 a. On or about August 17, 1999, Respondent was convicted of one misdemeanor count
15 of violating Vehicle Code section 12500(a) [driving without license] in the criminal proceeding
16 entitled *The People of the State of California v. Kimberly McCallion* (Super. Ct. of California
17 County of Ventura, 1999, 99M074963).

18 b. On or about February 7, 2000, Respondent was convicted of one misdemeanor count
19 of violating Penal Code section 23152(a) [driving under the influence of alcohol or drugs] in the
20 criminal proceeding entitled *The People of the State of California v. Kimberly McCallion* (Super.
21 Ct. of California County of Ventura, 1999, 99S004229).

22 c. On or about March 20, 2000, Respondent was convicted of one misdemeanor count
23 of violating Vehicle Code section 14601.5(a) [driving on suspended license] in the criminal
24 proceeding entitled *The People of the State of California v. Kimberly McCallion* (Super. Ct. of
25 California County of Ventura, 2000, 00M016369).

26 d. On or about July 14, 2000, Respondent was convicted of one misdemeanor count of
27 violating Vehicle Code section 14601.2(a) [driving when privilege suspended or revoked for
28 driving under the influence] in the criminal proceeding entitled *The People of the State of*

1 *California v. Kimberly McCallion* (Super. Ct. of California County of Ventura, 2000,
2 00M038249).

3 e. On or about June 28, 2001, Respondent was convicted of one misdemeanor count of
4 violating Penal Code section 484(a) [petty theft] and one misdemeanor count of violating Penal
5 Code section 1320(a) [failure to appear] in the criminal proceeding entitled *The People of the*
6 *State of California v. Kimberly McCallion* (Super. Ct. of California County of Ventura, 2001,
7 2001019308).

8 **PRAYER**

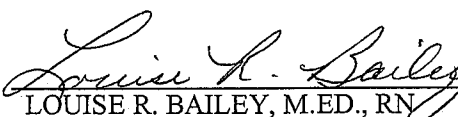
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 743464, issued to
12 Kimberly Rose McCallion;

13 2. Ordering Kimberly Rose McCallion to pay the Board of Registered Nursing the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.
17
18

19 DATED: May 13, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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